

## PROCUREMENT POLICY

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### Section 1

#### Statement of Purpose

These procurement policies and procedures are intended to establish an open, competitive and transparent procurement process for MNSure that: a) promotes public confidence in MNSure's procurements; b) ensures the fair and equitable treatment of all persons and entities that participate in MNSure's procurement processes; c) fosters appropriate competition and provides safeguards for maintaining a procurement system of quality and integrity; d) promotes MNSure's increased economic efficiency and responsibility; e) achieves the best value for MNSure's purchasing power; and f) provides clarity and simplicity in the procedures governing MNSure's procurements.

### Section 2

#### Statutory Authority

These Procurement Policies and Procedures, and provisions of Minnesota procurement law from which MNSure has not been exempted in Minnesota Statute ch. 62V, govern MNSure's acquisition of all goods, services, and utilities. These Policies and Procedures have been crafted in consultation with the commissioner of administration, as contemplated by Minnesota Statutes section 62V.03, subdivision 2(d)(2).

### Section 3

#### Definitions

For purposes of this policy, the following terms and phrases are defined as follows:

3.1 "Best value" describes the result intended in all procurement processes. Price and performance criteria must be used to determine best value, but additional criteria may also be used to determine best value, including, but not limited to: the quality of the vendor's or contractor's performance on previous projects; the timeliness of the vendor's or contractor's performance on previous projects; the level of customer satisfaction with the vendor's or contractor's performance on previous projects; the vendor's or contractor's record of performing previous projects on budget and ability to minimize cost overruns; the vendor's or contractor's ability to minimize change orders; the vendor's or contractor's ability to prepare appropriate project plans; the vendor's or contractor's technical capacities; the individual qualifications of the contractor's key



personnel; the vendor's or contractor's ability to assess and minimize risk; or the vendor's ongoing compliance with those provisions of the Patient Protection and Affordable Care Act related to the provision of health insurance to their employees.

3.2 "Organizational conflict of interest" means that because of existing or planned activities or because of relationships with other persons: the vendor is unable or potentially unable to render impartial assistance or advice to the state; the vendor's objectivity in performing the contract work is or might be otherwise impaired; or the vendor has an unfair advantage.

#### **Section 4**

##### **Conflicts of Interest**

The acquisition of goods, services and utilities by MNSure must be free of all direct conflicts of interest, and all reasonable efforts must be made to avoid, mitigate, or neutralize any organizational conflicts of interest. The Executive Director and MNSure staff will observe the requirements of the code of ethics in Minnesota Statutes, section 43A.38 and the MNSure Conflicts of Interest Policy, Board Policy #11 in the procurement process.

#### **Section 5**

##### **Contract and Purchasing Approval Authority**

5.1 **Related Policy.** Contracts and purchases for the acquisition of goods, services and utilities covered by this Policy are also subject to the authority limits in the Delegation of Authority Policy, Board Policy #05.

5.2 **Combining Transactions.** Dividing a commitment or transaction into two or more parts or payments to evade a procurement requirement under this Policy is not permitted. Any two or more series of reasonably related transactions which, in the sole opinion of the Board of Directors, are related, will be considered as a single transaction for the purpose of determining the procurement procedures required by this Policy.

#### **Section 6**

##### **Standard Procurement Processes**

Except as provided in Section 7 below, MNSure will acquire all goods, services and utilities using one of the following methods. For purposes of applying the following sections, the contract value, if the amount payable under the contract is not a fixed dollar amount, will be deemed to be the maximum amount that could be paid based on the payment methodology set forth in the contract, using a good faith estimate if necessary:



6.1. Competitive Bidding Process for High-Cost Procurements.

6.1.1. For contracts and purchases valued at more than \$200,000, each solicitation must be in writing, must be in a form approved by the Executive Director, must establish a process for the evaluation of bids, and must identify the factors on which the responses to the solicitation will be evaluated.

6.1.2. Each solicitation will be published on the MNSure website and the State of Minnesota solicitations website and may be advertised in any other reasonable manner that would promote competition and transparency in the procurement process, as determined by the Executive Director or designated procurement officer. The Executive Director or designated procurement officer may invite specific vendors to submit a response to the solicitation, so long as this invitation does not occur prior to publication of the solicitation.

6.1.3. The Executive Director will ensure that responses are received and evaluated in the manner specified in the solicitation document.

6.1.4. The Executive Director or designated procurement officer may simultaneously conduct discussions or negotiations with multiple offerors after the receipt of responses and prior to the awarding of contracts. The person conducting the discussions or negotiations must keep a record of all such communications and will treat offerors fairly in conducting discussions or negotiations.

6.1.5. Contracts and purchases will be awarded to the offeror(s) whose response is deemed to represent the best value to MNSure consistent with the published evaluation criteria

6.1.6. All responses may be rejected if the Board or the Executive Director determines that it is in MNSure's best interests to do so.

6.2. Moderate-Cost Procurements. For contracts and purchases valued between \$50,000 and \$200,000, the Executive Director may use the competitive bidding process outlined in Section 5.1, or, if it is in the best interests of MNSure, the Executive Director, or a procurement officer designated by the Executive Director, may use a streamlined process by which (s)he solicits in writing (with the amount of detail reasonable under the circumstances) and obtains written responses from at least three vendors. The solicitation will be published as in 6.1.2 before any vendors are contacted. The Executive Director or designated procurement officer may award a contract or purchase when it represents the best value to MNSure. The Executive Director or designated procurement officer must document any and all communications with vendors and have a written justification documenting why the selected vendor represented the best value.

6.3. Simplified Methods for Low-Cost Procurements. For contracts and purchases valued at less than \$50,000, competitive selection is not required. The Executive



Director or a procurement officer designated by the Executive Director may award a contract or purchase when it represents the best value to MNSure. The Executive Director or designated procurement officer must appropriately document why the selected vendor represented the best value.

## Section 7

### Exceptions to Standard Procurement Processes

MNSure recognizes that certain situations make the use of the Standard Procurement Processes (in Section 6, above) impractical. The Executive Director will determine whether circumstances warrant using a process other than one of the Standard Procurement Processes described in Section 5, and then document that determination in the contract or purchasing file.

#### 7.1. Emergency Procurement.

7.1.1. Emergency procurement is a non-competitive procurement method and may only be used after a written determination, by the Executive Director or a procurement officer designated by the Executive Director, that it is not possible to undertake a competitive procurement because of an emergency requiring MNSure to (a) protect the public health, safety or welfare; (b) preserve or protect MNSure's property or systems; or (c) mitigate a threat to the continuation of services provided by MNSure.

7.1.2. The Executive Director will notify the Chair and/or Vice Chair of the Board of Directors and consult with one or both of them to the maximum extent possible whenever s/he has made a determination that emergency procurement is necessary.

7.1.3. An emergency procurement is limited to the procurement of only the types and quantities of goods or services needed to meet the immediate emergency and will not be used to meet long-term requirements unless the Executive Director finds it is in the best interests of MNSure to extend the contract.

7.1.4. The Executive Director, or a procurement officer designated by the Executive Director, will solicit responses from as many vendors as practicable and will ensure that any emergency procurement is undertaken with the maximum amount of transparency and competition consistent with the circumstances of the emergency.

7.1.5. The Executive Director or designated procurement officer will seek the most favorable price and the most favorable terms and conditions that can be obtained under the circumstances of the emergency.



7.1.6. Contracts and purchases will be awarded to the offeror whose response is deemed by the Executive Director or designated procurement officer to be the best value for MNSure under the circumstances of the emergency. The Executive Director or designated procurement officer must document all communications with vendors and have a written justification documenting why the selected vendor represented the best value.

7.2. Sole Source Procurement.

7.2.1. Sole source procurement is a non-competitive procurement method and may only be used after a written determination, by the Executive Director or a procurement officer designated by the Executive Director, that there is only one source for goods or services that MNSure requires.

7.2.2. The Executive Director will ensure that sole source procurement is used only in circumstances when it is both appropriate and in the best interests of MNSure.

7.3. Inter-Governmental Procurements.

7.3.1. When it is in MNSure's best interests, MNSure may, without competition, enter into an agreement to procure goods or services from (a) the State of Minnesota; (b) a political subdivision of the State of Minnesota; (c) the University of Minnesota; (d) the federal government; or (e) another state government, including another state's health benefits exchange.

7.3.2. MNSure may join Minnesota's Cooperative Purchasing Venture ("CPV") as defined in Minnesota Statutes, section 16C.03, subd. 10, and use any contracts available to CPV members. When MNSure elects to use a contract available to CPV members, it agrees to follow all processes and procedures that would apply to other similarly-situated CPV members.

7.3.3. MNSure will report to the legislature all inter-agency agreements as required by Minnesota Statutes, section 62V.05, subd. 7(d).

7.3.4. Any contract or purchase partially funded through the Minnesota Department of Human Services ("DHS") with funding for public health care programs must be approved by DHS prior to the expenditure of funds. Any contract or purchase eligible for enhanced federal financial participation by Medicaid must be sent to DHS for submission to the Centers for Medicare & Medicaid Services ("CMS") for approval.

## Section 8

### Additional Statutory Procurement Provisions Applicable to MNsire

- 8.1. Call Center. MNsire must comply with the provisions of Minnesota Statutes, section 16C.086.
- 8.2. Professional and Technical Services. MNsire must comply with the provisions of Minnesota Statutes, section 16C.08, subdivision 2, paragraph (b), clauses (1) to (8). When the statute allows the commissioner of administration to grant an exception, the Executive Director or his/her designee will have authority to grant the exception.
- 8.3. Procedure for Service Contracts. MNsire must comply with the provisions of Minnesota Statutes, section 16C.09, subd. a(1) and a(3), b(1) - (2), and c(1) - (2); however, when the statute requires the commissioner of administration to make a particular determination, it will be interpreted to require that the Executive Director or his/her designee make that determination.
- 8.4. Designation of Procurements from Small Businesses. MNsire must comply with the provisions of Minnesota Statutes, section 16C.16; however, when the statute requires the commissioner of administration to perform a particular task, it will be interpreted to require the Executive Director or his/her designee to perform that task, except that this will not be interpreted to transfer any of the commissioner's authority to promulgate rules under this section, designate targeted businesses, or establish a targeted group program.
  - 8.4.1. To promote full compliance with the letter and the intent of Minnesota Statutes, section 16C.16, the Executive Director must designate a liaison officer responsible for: coordinating outreach to targeted group businesses; reviewing compliance with laws governing targeted group business procurement participation; and recommending modifications to procurement procedures to encourage greater targeted group business participation.

## Section 9

### Contract Modifications

The Executive Director, or a procurement officer designated by the Executive Director, may agree on behalf of MNsire to modify the terms of an existing contract. The Executive Director may, without prior approval of the Board, agree to any contract modification no greater than 20% of the total amount of the contract prior to modification, up to a limit of \$500,000. However, any such contract modification must only entail tasks that are substantially similar to those in the original contract or involve tasks that are so closely related to the original contract that it would be impracticable for a different contractor to perform the work, and the Executive Director or a procurement



officer designated by the Executive Director must document in writing the justification for the modification based on these factors. All modifications must be consistent with the Board approved annual Budget and Expenditure Plan. All other contract or purchase modifications require prior approval of the Board. This provision applies to all MNSure contracts and purchases, and is retroactively applicable to MNSure contracts executed prior to the date of this Policy.

## **Section 10**

### **Bid protests**

10.1. **In general.** In order to have an open and transparent procurement process, it is important to have a procedure by which a vendor may assert, to an impartial decision-maker, that a specific solicitation process has not been fair and the reasons for that perceived unfairness. This Section provides a procedure for addressing alleged improprieties in the bidding and solicitation process.

#### **10.2. Time Restrictions.**

10.2.1. A protest based upon alleged improprieties in a solicitation that are apparent before bid opening or before the closing date for receipt of proposals must be submitted to the Executive Director before bid opening, if the alleged improprieties are apparent at that point, or before the closing date for receipt of proposals, if the alleged improprieties are apparent at that point.

10.2.2. In all other cases, protests must be submitted to the Executive Director not later than ten (10) business days after the basis for protest is known, or should have been known, whichever is earlier.

#### **10.3. Form and Content of Protest.**

10.3.1. Any protest must be submitted in writing and must be addressed to the Executive Director.

10.3.2. Any protest must include the name and address of the protestor; sufficient identification of the procurement being protested; a statement of the reasons for the protest; and supporting exhibits, evidence, or documents to substantiate the reasons for the protest.

#### **10.4. Decision of Executive Director or Designated Procurement Officer.**

10.4.1. Decisions regarding the resolution of a bid protest may be made by the Executive Director, if the Executive Director did not personally or substantially participate in the procurement at issue, or by a designated procurement officer who did not personally or substantially participate in the procurement at issue (hereinafter either individual is referred to as a "Disinterested Procurement Officer").



10.4.2. A Disinterested Procurement Officer may deny any bid protest (a) received after the time periods set forth in Section 10.2, or (b) lacking the required elements set forth in Section 10.3.2.

10.4.3. With regard to all other bid protests, a Disinterested Procurement Officer will resolve the protest. The Disinterested Procurement Officer may (a) notify other interested parties of the existence of the protest and may obtain the views of other interested parties, and (b) conduct discussions or negotiations with the protestor or with other interested parties and attempt to resolve the protest by agreement.

10.4.4. The Disinterested Procurement Officer will issue a written decision resolving any bid protest that cannot be resolved by agreement. The options for resolving a protest are outlined in Section 10.5, below.

10.4.5. For bid protests associated with contracts valued at less than \$250,000, or with a procurement in which the contract is reasonably anticipated to be valued at less than \$250,000, the decision of the Disinterested Procurement Officer is final.

10.5. Resolution of Protest. In resolving a bid protest, the Executive Director, or a designated procurement officer, provided that this individual did not personally or substantially participate in the procurement at issue, may (a) deny the protest, (b) sustain the protest but nonetheless determine that the procurement should proceed consistent with Section 11.2 below, or (c) sustain the protest and declare a contract to be void, order that all bids be reevaluated, order that a solicitation be reissued, or require that any other action be taken that fairly addresses the protest.

10.6. Appeal. Except in cases where, as set forth in Section 10.4.5 above, the decision of the Executive Director or designated procurement officer is final, a protestor may appeal from the decision of the Executive Director or designated procurement officer to the Board. The appeal must be in writing, must be addressed to the Chair of the Board, must identify each ground on which the protestor claims that the protest was resolved in error, and must include a copy of the initial protest and the decision of the Executive Director or designated procurement officer resolving the protest. The protester will have the burden of proving, by clear and convincing evidence, that the decision of the Executive Director or designated procurement officer lacks a substantial factual basis, or that the conclusions drawn from the facts are arbitrary and capricious, or that the decision is based on impermissible considerations. Appeals must be postmarked within ten (10) calendar days after issuance of the decision resolving the protest. Ten (10) copies of all required materials must be submitted. The Board will resolve the appeal using the options outlined in Section 10.5 above. Per Minnesota Statutes, section 62V.05, subdivision 6, the Board may appoint hearing officers to conduct hearings and issue final orders on these appeals, and it may enter into an agreement with another state agency to conduct such hearings.



10.7. Award Pending Appeal of Resolution. The Board may, by majority vote, award a contract before there is a final decision on an appeal filed under Section 10.6. Otherwise, a contract will not be awarded while an appeal under Section 10.6 is pending before the MNSure Board.

## Section 11

### Noncompliance

11.1. Board Authority to Terminate. If the Board or a person with authority to award a contract under these Procurement Policies and Procedures finds that a procurement violates these Policies and Procedures, or that a contract has been awarded in violation of these Policies and Procedures, the Board or person with authority may order that any action be taken to resolve the violation and may terminate a contract awarded in violation of these Policies and Procedures.

11.2. Board Authority to Proceed. Alternatively, the Board or person with authority may determine that a procurement should proceed, or that a contract should not be terminated, notwithstanding a violation of these Procurement Policies and Procedures, if (a) the parties acted in good faith, (b) proceeding with the procurement or ratification of the contract would not undermine the purposes of these Policies and Procedures, (c) the violation was insignificant or otherwise did not prevent substantial compliance with these Policies and Procedures, and (d) proceeding with the procurement or ratification would be in the best interests of MNSure.

## Section 12

### Reporting

12.1. At each regular meeting of the Board, the Executive Director will make a report, either oral or written, to the Board that includes a list of (a) the contracts that MNSure has awarded since the last regular Board meeting, (b) the persons or entities to which each contract was awarded, (c) the purpose of the contract, (d) the value of the contract; and (e) whether the emergency procurement process was used. At each regular meeting of the Board, the Executive Director will make a report, either oral or written, to the Board that includes all bid protests and resolutions.

12.2. The Executive Director will direct appropriate MNSure staff to periodically perform audits of MNSure's compliance with these Policies and Procedures and will include the results of such audits in the reports identified in 12.1 above.

12.3. Any MNSure staff who discovers evidence of violation of these Policies and Procedures is required to report the violation or suspected violation to the employee's supervisor, the Executive Director or designee, the Board, or the legislative auditor.



Board Chair Approval

Date 8/21/13

Signature Bruce K. Beaulieu